

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

TEXAS BANKERS ASSOCIATION;
RIO BANK, MCALLEN, TEXAS; and
AMERICAN BANKERS ASSOCIATION

Plaintiffs,

Case No: 7:23-cv-00144

v.

CONSUMER FINANCIAL PROTECTION
BUREAU; and ROHIT CHOPRA, in his official
capacity as Director of the Consumer Financial
Protection Bureau,

Defendants.

**PLAINTIFFS'/INTERVENORS' NOTICE REGARDING
CFPB v. COMMUNITY FINANCIAL SERVICES ASSOCIATION
AND SCHEDULING**

As the Court is aware, the Supreme Court recently reversed the Fifth Circuit’s decision regarding the constitutionality of the funding for the Consumer Financial Protection Bureau. *CFPB v. Cmty. Fin. Servs. Ass’n of Am.*, 2024 WL 2193873 (U.S. May 16, 2024). This Court previously stayed and extended all compliance deadlines for the Final Rule at issue here—Small Business Lending Under the Equal Credit Opportunity Act, 88 Fed. Reg. 35,150—“until after the Supreme Court’s final decision” in *Community Financial*. ECF No. 25 at 17; ECF No. 69 at 7. Now that the stay period has presumably ended, the CFPB is instituting new compliance dates accounting for the 290-day period during which the Final Rule was stayed. *See* ECF No. 97 at 2; *see also* ECF No. 25 at 17 (ordering the CFPB to “extend Plaintiffs and their members’ deadlines for compliance with the requirements of the Final Rule to compensate for the period stayed”); ECF No. 69 at 7–8 (same for Intervenors).

The parties previously sought and obtained a stipulated scheduling order from the Court for briefing on cross-motions for summary judgment. ECF No. 73 (modified by ECF No. 76). The purpose of the parties requesting that order was to provide the Court with comprehensive briefing on the APA challenges to the Final Rule without the need to seek additional emergency relief if and when the Supreme Court reversed the Fifth Circuit in *Community Financial*. That briefing is nearly complete—only Defendants’ Reply Brief remains outstanding and it is due on June 7, 2024.

Even though the Plaintiffs/Intervenors do not wish to create an emergency for the Court in deciding this case, it is worth noting that the active compliance dates set forth by the CFPB again trigger the window in which Plaintiffs/Intervenors and their members must begin preparing to comply with the Final Rule. *See* ECF No. 25 at 13; ECF No. 69 at 3. These compliance costs will be substantial, too. *See* ECF No. 78 at 4 (showing current implementation costs as exceeding \$6.8

Billion *for the banking industry alone*). And as this Court previously recognized, “the Fifth Circuit has accepted projected compliance costs as constituting irreparable harm.” ECF No. 25 at 14 (citing *Texas v. EPA*, 829 F.3d 405, 433–44 (5th Cir. 2016)).

Plaintiffs/Intervenors do not seek to disturb the current briefing schedule already requested or alter that process, but would like to make the Court aware that they will be ready to argue the cross-motions for summary judgment—and the related Motion to Supplement the Administrative Record, ECF No. 78—at the earliest date the Court is able to provide. The parties understand, of course, that the Court will need time to digest the briefing, but appreciate the Court’s consideration of the urgency of the situation, especially in light of the extensive costs and irreparable harm to be incurred by Plaintiffs/Intervenors and their members while preparing to comply with the Final Rule. Subject to the Court’s schedule, Plaintiffs’ counsel will be able to present arguments in person before this Court at any time after Defendants’ Reply Brief is filed, except for the days of July 1st–4th, 2024.

May 24, 2024

Respectfully submitted.

/s/ John C. Sullivan

John C. Sullivan

Attorney-in-Charge

Texas Bar No. 24083920

S|L LAW PLLC

610 Uptown Boulevard, Suite 2000

Cedar Hill, TX 75104

Telephone: (469) 523-1351

Facsimile: (469) 613-0891

john.sullivan@the-sl-lawfirm.com

James J. Butera*

Ryan Israel*

MEEKS, BUTERA & ISRAEL PLLC

2020 Pennsylvania Avenue, NW

Washington, DC 20006

Telephone: (202) 795-9714

jbutera@meeksbi.com

risrael@meeksbi.com

Thomas Pinder*

Andrew Doersam*

AMERICAN BANKERS ASSOCIATION

1333 New Hampshire Avenue, NW

Washington, DC 20036

tpinder@aba.com

adoersam@aba.com

*Counsel for Plaintiffs Texas Bankers
Association, Rio Bank, and American
Bankers Association*

** admitted pro hac vice*

/s/ James Bowen

James Bowen
Elbert Lin
Erica Nicole Peterson
Jennifer Lauren Clyde
HUNTON ANDREWS KURTH LLP
1445 Ross Avenue, Suite 3700
Dallas, TX 75202
Telephone: (214) 468-3309
Facsimile: (214) 880-0011
jbowen@huntonak.com

*Counsel for Intervenors Texas First Bank,
Independent Bankers Association of Texas,
and Independent Community Bankers of
America*

/s/ Misha Tseytlin

Misha Tseytlin
Joseph J. Reilly
**TROUTMAN PEPPER HAMILTON SANDERS
LLP**
401 9th Street NW, Suite 1000
Washington, DC 20004
Telephone: (202) 274-2908
joseph.reilly@troutman.com

Daniel Gordon Gurwitz
ATLAS HALL RODRIGUEZ LLP
818 West Pecan Boulevard
McAllen, TX 78501
Telephone: (956) 682-5501
dgurwitz@atlashall.com

*Counsel for Intervenors Texas Farm Credit,
Farm Credit Council, and Capital Farm
Credit*

/s/ Owen Colin Babcock

Alan Bartlett Padfield
Kelsey Nicole Linendoll
Owen Colin Babcock
PADFIELD & STOUT LLP
421 West Third Street, Suite 910
Fort Worth, TX 76102
Telephone: (817) 338-1616
Facsimile: (817) 338-1610
obabcock@padfieldstout.com

*Counsel for Intervenors XL Funding, LLC,
and Equipment Leasing and Finance
Association*

/s/ Sarah J. Auchterlonie

Sarah J. Auchterlonie
**BROWNSTEIN HYATT FARBER SCHRECK,
LLP**
675 15th Street, Suite 2900
Denver, CO 80202
Telephone: (602) 362-0034
Facsimile: (303) 223-1111
sja@bhfs.com

*Counsel for Intervenors Rally Credit Union,
America's Credit Unions (formerly Credit
Union National Association), and
Cornerstone Credit Union League*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on May 24, 2024, via the CM/ECF system and served via CM/ECF on all Counsel of record.

/s/ John C. Sullivan
John C. Sullivan

Counsel for Plaintiffs